

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JUSTIN MICHAEL RHODES

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PLAINTIFF

v.

Civil No. 1:18cv408-HSO-JCG

EVAN HUBBARD, et al.

DEFENDANTS

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION [43] AND DISMISSING PLAINTIFF'S CASE
WITHOUT PREJUDICE**

This matter comes before the Court on the Report and Recommendation [43] of United States Magistrate Judge John C. Gargiulo, entered in this case on July 28, 2020. The Magistrate Judge recommended that Plaintiff's suit be dismissed for failure to prosecute and for failure to abide by orders of the Court. After due consideration of the Report and Recommendation [43], Plaintiff's Complaint, the record, and relevant legal authority, the Court finds that the Magistrate Judge's Report and Recommendation should be adopted as the opinion of this Court.

I. RELEVANT BACKGROUND

On December 27, 2018, Plaintiff Justin Michael Rhodes ("Plaintiff"), acting pro se, filed his Complaint [1] against Defendants Evan Hubbard ("Hubbard"), Elaine Lege ("Lege"), Beth Victoriano ("Victoriano"), Deborah Whittle ("Whittle"), and Harrison County Adult Detention Center¹ (collectively "Defendants") claiming

¹ Plaintiff voluntarily dismissed his claims against Harrison County Adult Detention Center on July

that Defendants violated his right to due process. Compl. [1] at 7. On May 8, 2020, the Magistrate Judge entered an Order [33] Setting Omnibus Hearing. However, when the Order [33] was mailed to Plaintiff, it was returned with the annotation of “Inmate no longer here.” Letter [37] at 1. The Magistrate Judge cancelled the hearing, Order [38], and entered an Order to Show Cause, requiring Plaintiff to provide his current address and show cause by June 18, 2020, why his case should not be dismissed for failure to prosecute and abide by the Court’s Orders, Order [39] to Show Cause at 2. The Order warned Plaintiff that the Court may dismiss his suit for failure to prosecute under Federal Rule of Civil Procedure 41(b). *Id.*

Plaintiff did not respond to the Court’s Order [39] and, on June 24, 2020, the Magistrate Judge entered a Second Order [41] to Show Cause. The Order [41] again warned Plaintiff that his suit was subject to dismissal for failure to prosecute under Rule 41(b) and directed Plaintiff to respond by July 17, 2020. Second Order [41] to Show Cause at 2. To date, Plaintiff has not responded to either of the Court’s Orders [39] [41].

The Magistrate Judge entered a Report and Recommendation [43], on July 28, 2020, recommending that Plaintiff’s suit be dismissed for failure to prosecute and for failure to abide by the Court’s orders. R. & R. [43] at 3. The Report and Recommendation [43] was mailed to Plaintiff at his address of record, and was returned as undeliverable on August 10, 2020. *See* Letter [44]. Plaintiff has not filed an objection to the Magistrate Judge’s Report and Recommendation and the

17, 2019. *See* Resp. to Order [18]; Order [19] at 2.

time for doing so has passed. *See* R. & R. [43] at 4. Plaintiff has not contacted the Court or filed anything in this case since January 15, 2020. *See* Mot. [31] to Appoint Counsel.

II. DISCUSSION

Where no party has objected to a magistrate judge's proposed findings of fact and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge's Report and Recommendation is neither clearly erroneous nor contrary to law, and that the Report and Recommendation should be adopted as the opinion of the Court.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Magistrate Judge's Report and Recommendation [43] entered in this case on July 28, 2020, is adopted as the opinion of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that this civil action is **DISMISSED WITHOUT PREJUDICE** for failure to obey Orders of the Court and for failure to prosecute. A separate judgment will be entered in accordance with this Order, as required by Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED AND ADJUDGED this the 26th day of August, 2020.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE